

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

28TH STREET SUPERIOR)
HOSPITALITY, INC.)
)
 Plaintiff,) CASE NO. 1:19-cv-511
 vs.)
)
 THE CINCINNATI INSURANCE)
 COMPANY)
)
 Defendant.)

NOTICE OF REMOVAL

Defendant, The Cincinnati Insurance Company (“CIC”), pursuant to 28 U.S.C. § 1441 and § 1446, hereby files its Notice of Removal of civil action to the United States District Court for the Northern District of Indiana, Fort Wayne Division, from the Superior Court of Allen County, Indiana, and respectfully states:

1. CIC is the named Defendant in an action now pending in the Superior Court of Allen County, Indiana, Cause No. 02D02-1911-PL-000439, styled *28th Street Superior Hospitality Inc. v. The Cincinnati Insurance Company*. The action was originally initiated on November 12, 2019, by the filing of a Complaint for Damages against The Cincinnati Insurance Company which sought compensatory and punitive damages from the named defendants based on various theories of liability. Defendant first received a copy of the Complaint and Summons on November 14, 2019. Therefore, this Notice is timely pursuant to 28 U.S.C. 1446(b) as it is being filed within thirty days after receipt by CIC of a copy of the Complaint and Summons.

2. The action stated in the Complaint is entirely between citizens of different states of the United States, and CIC desires to remove said cause from the Superior Court of Allen County, Indiana, to the United States District Court for the Northern District of Indiana, Fort

Wayne Division. The Cincinnati Insurance Company is an Ohio corporation and 28th Street Superior Hospitality Inc. is a Michigan corporation.

3. The Plaintiff's Complaint for Declaratory Judgment and Damages (the "Complaint") alleges that it suffered a fire loss to its property during a period of time when said property was insured by the Defendant and that the Defendant has not paid fully the amounts due under the policy. (Appendix A, Complaint, ¶¶ 8-13)

4. The Plaintiff further alleges the Defendant has made an unfounded refusal to pay promised replacement cost benefits. (Appendix A, Complaint, ¶ 14)

5. The Plaintiff has further alleged it has been damaged in an amount in excess of \$1 million dollars in compensatory damages and further prays for an award of punitive damages. (Appendix A, Complaint, ¶ 33)

6. In light of Plaintiff's claim for benefits under the insurance policy and an award of punitive damages, the amount in controversy between Plaintiff and Defendant exceeds \$75,000 exclusive of costs and interest; therefore, since they are citizens of different states, neither of which is Indiana, the Court has original jurisdiction under 28 U.S.C. §1332 over the claims asserted by Plaintiff. *Meridian Security Insurance Co. v. Sadowski*, 441 F.3d 536 (7th Cir. 2006); *Spivey v. Vertrue, Inc.*, 528 F.3d 982 (7th Cir. 2008).

7. Appendix A includes a copy of the state court docket and all pleadings and orders served on the Defendant in the state court action.

8. Upon receiving a file-marked copy of this Notice of Removal, The Cincinnati Insurance Company will serve a file-marked copy of this Notice of Removal upon counsel for Plaintiff and file a copy of this Notice of Removal with the Clerk of the Superior Court of Marion County, Indiana.

Respectfully submitted,

KIGHTLINGER & GRAY, LLP

By *s/ Michael E. Brown*
Michael E. Brown, ID No. 2914-49
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the forgoing was served by the Court's Electronic System and/or First Class Mail on counsel or party of record this December 3, 2019 to:

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